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12/05/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Clerk of the Montana Supreme Court,
P.O. Box 203003,
Helena, MT 59620-3003.

FILED

Case Number: AF 09-0688

Re: Professional Rules of Conduct, Rule 8.4(g)

DEC 05 2016

Honorable Members of the Court,

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

You have called for public comment of the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys.

As a pastor, I hereby submit my request that you reject this rule for the following reasons.

Lawyers and judges should not be restricted on what they could openly discuss with the citizens of Montana. This appears to be an overt threat to the religious freedom of Montana attorneys. In addition, this may bring about a chilling effect on access to legal advice if lawyers are reluctant to grant pro-bono work, or to sit on the governing boards of congregations or not-for-profit companies. The lack of access to such legal advice may create a serious threat to religious freedom in Montana.

I would be surprised/shocked to find within our state constitution speaking truthfully on any subject(s) of which people are confused – would be a violation of our state’s intent for its citizens, and be subject to legal action.

Our freedom of speech, and freedom of religion – regardless of what religion that is, and regardless of it’s beliefs or doctrines – should not be limited within open and honest discussions with recognized members of the court system.

Most importantly, from my perspective, this rule does not allow for sincerely held religious beliefs. Such beliefs may lead a lawyer to speak against certain behaviors associated with a sexual orientation, gender identity or marital status, without acting in a discriminatory manner. Lawyers with such religious beliefs may, by those beliefs, voluntarily limit their clientele. The adoption of this rule, threatens their very livelihood on the basis of their speech. If they speak their beliefs they may be disciplined.

Comment 4 to Rule 8.4(g) says that “Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees...” If so interpreted, this rule will provide the foundation for exacerbating class warfare. The favored classes will enjoy the support of Montana attorneys. The disfavored classes will suffer. A lawyer would face discipline if he were to say, “I will

hire you because you are a white male.” A lawyer would be free to say, “I will hire you because you are a lesbian.”

If a lawyer, or judge is restricted from informing Montana State’s citizens of potential situations and areas of which they are ill-informed, then do the lawyers and/or judges really have any place making judgments, or determining what any law actually states?

Having information by which Montana’s citizens can make informed, educated and intelligent decisions should be one the tenants of the whole judicial system of our State. Certainly, lawyers and/or judges should not be barred from stating facts.

On the basis of the above reasoning I urge the court not to adopt the proposed change to Rule 8.4 of the Professional Rules of Conduct.

Signed, 
Pastor Mike Whitney

Great Falls, MT